Administrative Order 2006-2 PRIVACY POLICY

FREQUENTLY ASKED QUESTIONS

1. If a defendant has multiple court files with documents filed after 3/1/06 which contain his SSN, may he file one motion to cover all files, or must he file one motion for each file?

There is no social security number protection "action." Each individual case file that contains a social security number filed on or after 3/1/2006 must be handled individually by the court. Therefore, a party (it may not always be a defendant) must file a motion in each file in which he or she seeks to protect a social security number.

2. Per MCR 2.119(G)(2), the clerk shall charge a single motion fee for all motions filed at the same time "in an action" regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions. For purposes of SSN protection, if the defendant must file multiple motions, must he pay \$20 for each motion (for each court file) or is SSN protection considered "an action" as opposed to the individual cases being "actions" under normal circumstances?

As noted above, there is no social security number protection "action." There is a remedy provision available in actions where documents have been filed that contain a social security number. If a party files multiple motions in one file at the same time, there is only one \$20 motion fee collected. If, however, a party files multiple motions on several different case files, then a \$20 motion fee must be assessed on each of those cases. These are "normal circumstances," and MCR 2.119 applies just like it does in all other motion practice.

3. If a defendant files a motion today, knowing that his case file contains documents with his SSN filed after 3/1/06, does that motion apply to all future filings or does he have to file and pay for a motion every time the plaintiff files a document containing the defendant's SSN, say, for future garnishments? May the victim defendant file a motion to hold the plaintiff in contempt if the plaintiff continually includes the defendant's SSN in documents where it is not required just to harass him?

When a party files a document containing a social security number where the social security number is not required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification, the owner of the social security number may file a motion to have it redacted from the original document. Within the body of that motion, the owner of the social security number may request that the court find the person filing the social security number in contempt of court. As always, the court is also allowed to, sua sponte, find a party in contempt of court. Contempt proceedings require a hearing because the action

giving rise to the contempt was committed outside the presence of the judge. See MCR 3.606

If, however, the social security number is required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification, the owner of the social security number may file a motion only to have it kept in a separate, nonpublic file.

5. Must the plaintiff be served? Must time frames for service be followed? Or can these motions be handled ex parte?

Yes. See MCR 2.119 (C)(1) & (2). Yes. See MCR 2.119 (C)(1) & (2). Yes. See MCR 3.207

6. Must there be a hearing or may the defendants send in a mail request?

A party may request an ex parte order pursuant to MCR 3.207 (a motion fee still applies). If a court normally accepts motion requests via mail, then there is no difference between this type of motion and any other motion and it should apply the same policies and procedures it always does.

7. Is there any circumstance under which a court can deny the motion if the moving party requests all proper remedies properly?

This must be determined by the court on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

8. Should granting the motion be automatic? Does the 35-day time guideline apply?

If the motion is filed ex parte, "the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued." MCR 3.207 (1)

If the motion is heard, the court should make the determination on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

MCR 8.107(A) states, "Matters under submission to a judge or judicial officer should be promptly determined . . . ; otherwise a decision should be rendered no later than 35 days after submission." Furthermore, the Delay in Matters Submitted Report defines a "matter" as: "any issue submitted to a judge requiring a decision such as a pretrial motion, postjudgment motion " Therefore, the 35-day time period applies.

9. Must the judge report these motions on "Delay in Matters Submitted to the Judge" if a decision is not made within 56 days?

The Delay in Matters Submitted Report defines a "matter" as: "any issue submitted to a judge requiring a decision such as a pretrial motion, postjudgment motion, plea under advisement pursuant to MCR 6.302(F) or MCR 3.941(D)," etc. A motion is considered a "matter," so the answer is yes.

10. Can a court set up procedures whereby the clerks can automatically act on these motions, similar to their taking no proof of insurance waivers?

These are motions, not waivers. The court must issue an order prior to the clerk's taking any action. The evidence that must be considered by the court is set forth in court rule.

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If the motion is heard, the court should make the determination on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

11. Is it up to the defendant to specifically identify which documents need to be protected or is it sufficient that he just identify the case number in his motion?

MCR 2.119(A)(1) sets forth the requirements for the Form of Motions and what they must contain.

12. If the court receives a garnishment with the complete SSN displayed, should the clerk redact all but the last four digits or leave the garnishment as it was submitted to the court?

The clerk should never redact social security numbers from original documents without an order entered by the court after hearing on a motion to redact. Additionally, there is no authority for a court to refuse to accept documents for filing just because they have a social security number within the body of the document. Garnishments, depending on whom they are submitted for collection purposes, will more than likely require a social security number. If that is the case and it meets the criteria set forth in Administrative Order 2006-2, the court may not have to redact the social security number from any copy it provides.